172 Iowa 225, 150 N. W. 46; Chicago Telephone & Sup. Co. *v.* Marne & Elkhorn Telephone Co., 134 Iowa 253, 111 N. W. 935).

It therefore follows that the court committed error in excluding the testimony of the defendant, and the judgment of the lower court must be reversed."

Guaranty of Advertising by Magazine—Extent.—In Heathcote *v.* Curtis Pub. Co., in the Supreme Judicial Court of Massachusetts (March, 1918, 118 N. E. 909), it was laid down that a magazine editorial guaranteeing the integrity of its advertising and the honesty and trustworthiness of its advertisements was not strictly a guaranty to answer for the debt or default of another, but merely that its advertisers could be depended upon as reliable and honest.

"The integrity of its advertising and the honesty and trustworthiness of its advertisements," indicate no more than this: that its advertisers can be depended upon as reliable and honest. A statement that a manufacturer is trustworthy is an assurance that he is so reputed—that nothing to the contrary is known; and while an action may lie upon such a promise in case of fraud, it is not a statement which gives a right of action against the publisher if the party recommended does not do as he agrees under any particular contract. The defendant assured the readers of its publication that its advertisements were honest and trustworthy. It did not guarantee the faithful performance of contracts made by its advertisers or agree to answer for their debt or default; nor did it promise that in supplying materials for the construction of the house the North American Construction Company would fully and exactly carry out the terms of its agreement with the plaintiff's intestate. See Eaton *v.* Mayo, 118 Mass. 141.

Physicians and Surgeons—Malpractice—Consent of Patient as Defense.—In Lembo *v.* Donnell (Me.), 103 Atl. 11, it was held that the fact that plaintiff consented to an illegal operation to procure an abortion on her would be no defense to an action for actual damages suffered from the operation, and subsequent unskilled treatment. The court said:

"The basis of defendant's exceptions lies to his position that as the plaintiff consented to the operation she cannot recover because the operation is an illegal one.

In a similar case, Miller *v.* Bayer (Wis.) 123, 68 N. W. 869, the court said:

'It is further contended that plaintiff cannot recover, because she submitted to the operation performed upon her. Such is not the law. Consent by one person to allow another to perform an unlawful act upon such person does not constitute a defense to an action to re-

cover the actual damages which such person thereby received' (citing 2 Greenleaf, Ev., § 85; Shay *v.* Thompson, 59 Wis. 540, 18 N. W. 473, 48 Am. Rep. 538; Fitzgerald *v.* Calvin, 110 Mass. 153; Adams *v.* Waggoner, 33 Ind. 531, 5 Am. Rep. 230; Com. *v.* Collberg, 119 Mass. 350, 20 Am. Rep. 328; Grotton *v.* Glidden, 84 Me. 589, 24 Atl. 1008, 30 Am. St. Rep. 413). We agree that this statement of the law is correct."

Nuisance—Stare Decisis—Rule of Property—Effect of Subsequent Statute.—In State *v.* Sutherland, 166 N. W. 14, the Supreme Court of Wisconsin, held that where structures of substantially the same kind and extent as are sought to be enjoined as a nuisance have been twice held by the Supreme Court not to be such, it is the duty of such court to follow the decisions and protect property rights which have grown up thereunder.

It was held that where structures of the character complained of had been twice judicially adjudicated to be lawful, and plaintiff had erected similar structures in reliance upon such decisions, he could not be deprived, without compensation, of the property rights so accruing because a statute enacted subsequently to the decisions and to the erection of plaintiff's structures assumed to declare such structures a nuisance. The court said in part:

"The right to maintain a navigable river free of all obstruction to navigation, as that term was understood at common law, is not inconsistent with such private ownership of the bed of the stream (Wisconsin cases cited above; Magnolia *v.* Marshall, 39 Miss. 109; Pascagoula Boom Co. *v.* Dixon, 77 Miss. 587, 28 South. 724, 78 Am. St. Rep. 536; McLennan *v.* Prentice, 85 Wis. 427, 443, 55 N. W. 764; Priewe *v.* W. S. L. & I. Co., 93 Wis. 534, 67 N. W. 918, 33 L. R. A. 645; United States *v.* Chandler-Dunbar Co., 229 U. S. 53).

"If the right of the public to have the navigable streams of the State kept free from obstruction has been modified to any extent, it has been so modified by the force and effect of a State policy so long adhered to as to have become a rule of property, thereby vesting certain rights in the riparian proprietor by implication of law (Willow River Club *v.* Wade, 100 Wis. 86). This modification, if such it is, having been sanctioned by the courts and long adhered to, must, under the doctrine of stare decisis, be held to have established a rule of property, and, at least so far as rights have accrued thereunder, they will not be disturbed (Olson *v.* Merrill, supra; Barney *v.* Keokuk, 94 U. S. 324, 24 L. Ed. 224; Brader *v.* Brader, 110 Wis. 423, 85 N. W. 681).

"With these well-established principles in mind, we proceed to a consideration of the status of the property in question. A careful reading of the findings in this case, as well as of the showing made